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Location : All Courts [Help](#)**REGISTER OF ACTIONS****CASE No. 17-2263****ERLINDA TENORIO AND ABEL TENORIO VS. THE CITY OF KYLE, TEXAS
AND UNION PACIFIC RAILROAD COMPANY**§
§
§
§
§Case Type: **Other Injury or Damages**Date Filed: **10/26/2017**Location: **207th District Court****PARTY INFORMATION**

		Lead Attorneys	
Defendant	City of Kyle 100 W. Center St. Kyle, TX 78640		
Defendant	Union Pacific Railroad Company 1999 Bryan St., Ste. 900 Dallas, TX 75201		
Plaintiff	Tenorio, Abel 101 Tenorio St Kyle, TX 78640	Male	Gary A Calabrese <i>Retained</i> 512/472-9394(W)
Plaintiff	Tenorio, Erlinda 101 Tenorio St. Kyle, TX 78640	Female	Gary A Calabrese <i>Retained</i> 512/472-9394(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
10/26/2017	Court's Docket Sheet		
10/26/2017	Plaintiffs Original Petition (Open Case)		
10/27/2017	Citation		
	City of Kyle	Served	11/09/2017
	Union Pacific Railroad Company	Served	11/06/2017
11/14/2017	Affidavit of Service/Return Of Service		
	City of Kyle		

FINANCIAL INFORMATION

	Plaintiff Tenorio, Erlinda		
	Total Financial Assessment		437.00
	Total Payments and Credits		437.00
	Balance Due as of 11/27/2017		0.00
10/26/2017	Transaction Assessment		435.00
10/26/2017	Texfile Electronic Payment Receipt # 209519-DC	Tenorio, Erlinda	(435.00)
11/14/2017	Transaction Assessment		2.00
11/14/2017	Texfile Electronic Payment Receipt # 210919-DC	Tenorio, Erlinda	(2.00)

Exhibit A**2 of 8**

FILED
10/26/2017 12:46 PM
Beverly Crumley
District Clerk
Hays County, Texas

NO. 17-2263

ERLINDA TENORIO and ABEL TENORIO
Plaintiffs

VS.

THE CITY OF KYLE, TEXAS and
UNION PACIFIC RAILROAD COMPANY,
Defendants

IN THE DISTRICT COURT

OF HAYS COUNTY, TEXAS

207th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Erlinda Tenorio and Abel Tenorio, Plaintiffs, complaining of the City of Kyle, Texas and Union Pacific Railroad Company, and for causes of action would respectfully show the following:

I.

Discovery herein is intended to be conducted pursuant to Level 3, Rule 190.4, Texas Rules of Civil Procedure.

II.

Venue is proper in Hays County, Texas in that the real property the subject of this suit is situated in Hays County, Texas and Defendant the City of Kyle, Texas is a home rule city situated in Hays County, Texas.

III.

Defendant the City of Kyle, Texas may be served with process by serving its Mayor, Todd Webster at 100 W. Center Street, Kyle, Texas 78640.

Union Pacific Railroad Company may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

C:\Users\Owner\Google Drive\Cases_GAC\tenorio\City of Kyle\Pleadings\Original Petition 2016-10-20.wpd

IV.

Plaintiffs are the owners of a house and lot located at 101 Tenorio St., Kyle, Texas 78640, more particularly described as Lot 14, Jose Addition, Kyle, Hays County, Texas, ("the subject property"). The subject property is adjacent to property, including storm sewers and drainage ditches, owned and purportedly maintained by the City of Kyle, Texas ("the City"). The property adjacent to the subject property owned by the City is adjacent to property owned and purportedly maintained by Union Pacific Railroad Company("Union Pacific"). All references to the City and Union Pacific include their employees and agents acting within the scope of employment.

Plaintiffs would show that on or about October 30, 2015, the subject property experienced severe flooding that cause Plaintiffs to suffer extreme mental anguish and distress as well as damage to the subject property and Plaintiffs' personal property located therein. Plaintiffs would show that said flooding was the direct and proximate result of Defendants' failure to adequately maintain, using motor driven equipment, tangible personal property, and otherwise, Defendants' respective properties, and the City's failure adequately to engineer a proper drainage system to service the subject property.

V.

Defendants failure adequately to maintain their properties resulted in a trespass upon the subject property and constitutes negligence, gross negligence, an unlawful taking of Plaintiffs' property without just compensation and other causes of action. Defendants' conduct was and is a direct and proximate result of damages suffered by each of the Plaintiffs in amounts far in excess of the minimal jurisdiction limits of this Court, for which Plaintiffs hereby sue. Damages sought by Plaintiffs are in excess of \$200,000 but not more than \$1,000,000.

VI.

Plaintiffs would show that Defendants had actual notice of the flooding event giving rise to this suit and that Defendants had actual knowledge of the propensity for the flooding event which occurred due to prior circumstances known to Defendants. Plaintiffs would show further that despite Defendants actual knowledge of the propensity for the flooding of the subject property, Defendants willfully ignored such knowledge and wholly failed to undertake necessary and/or adequate measures to remove or mitigate the propensity for flooding of the subject property, giving rise to Plaintiffs' damages. Further, Plaintiffs' damages arise from the condition of property owned by the City and Union Pacific.

VII.

In the alternative and in addition to the foregoing, Plaintiffs would show that the City long has neglected the neighborhood in which the subject property is located compared with other areas of the City. Further, the city negligently has allowed and permitted significant development in the area surrounding the subject property, increasing the propensity of flooding in the area, all of which, coupled with the City's failure to maintain its property, was a producing and/or proximate cause of damages suffered by Plaintiffs.

VIII.

Defendants' conduct was malicious, willful wanton and the type of conduct for which the law allows recovery of exemplary damages, for which Plaintiffs sue to the extent allowed by law, with the amount thereof to be determined by the trier of fact.

IX.

In the alternative and in addition to the foregoing, Plaintiffs hereby seek a declaratory judgment in which the Court determines and delineates the rights of Plaintiffs against Defendants with respect to the facts of this case as well as the responsibilities and duties of Defendants in relation thereto, the liability of Defendants for breaching said duties and responsibilities and the damages to which Plaintiffs are entitled as a result thereof.

X.

Plaintiffs further seek the recovery of all reasonable and necessary attorney's fees and all costs of court incurred in this cause through the trial of this suit and in the event of any and all appeals.

WHEREFORE, Plaintiffs pray that citation issue upon the Defendants and that upon final trial Plaintiffs have and recover of and from Defendants, jointly and severally, all actual damages suffered by Plaintiffs, exemplary damages, to the extent allowed by law, reasonable attorney's fees, prejudgment and post-judgment interest, all costs of Court, and for such other and further relief, both special and general, legal or equitable, to which Plaintiffs may be justly entitled to receive.

Respectfully submitted,

LAW OFFICE OF GARY A. CALABRESE
1301 Nueces Street, Suite 200
Austin, Texas 78701
Telephone: (512) 472-9394
Facsimile: (512) 472-9550
E-mail: gcalabre@prismnet.com

By: 

Gary A. Calabrese
State Bar Number 03611100
ATTORNEY FOR PLAINTIFFS

Jury Demand

Plaintiffs hereby make application and demand for a jury trial of this cause and Plaintiffs hereby tender the appropriate jury fee.

CITATION
THE STATE OF TEXAS

CAUSE NO. 17-2263

STYLED: ERLINDA TENORIO AND ABEL TENORIO VS. THE CITY OF KYLE, TEXAS AND UNION PACIFIC RAILROAD COMPANY

TO: UNION PACIFIC RAILROAD COMPANY, UPON WHOM PROCESS MAY BE HAD BY SERVING REGISTERED AGENT; CT CORPORATION SYSTEM, 1999 BRYAN STREET, SUITE 900, DALLAS, TX 75201

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 am on the Monday next following the expiration of 20 days after the date you were served this citation and petition, a default judgment may be taken against you."

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND, which was filed by the PLAINTIFF, in the above styled and numbered cause on the 26TH DAY OF OCTOBER, 2017, in the 207th District Court of Hays County, San Marcos, Texas.

Issued and given under my hand and seal of said Court at San Marcos, Texas on this the 27th day of October, 2017.

REQUESTED BY:
Gary A Calabrese
Law Office of Gary A Calabrese
1301 Nueces Street, Suite 200
Austin, TX 78701
512-472-9394

BEVERLY CRUMLEY
Hays County District Clerk
Hays County Government Center
712 Stagecoach Trail, Ste. 2211
San Marcos, Texas 78666

By: Christina Cordero
Christina Cordero, Deputy

OFFICER'S RETURN

Came to hand on the ___ day of _____ 20___ at ___ o'clock ___ M and executed the ___ day of _____ 20___ by delivering to defendant _____ in person, a true copy of this citation with a copy of the petition attached thereto on ___ day of _____ 20___ at ___ o'clock ___ M at _____ in _____ County, Texas.

[] Not executed. The diligence used in finding defendant being _____

[] Information received as to the whereabouts of defendant being _____

Service Fee: \$ _____

Sworn to and subscribed before me this the
___ day of _____, _____.

SHERIFF/CONSTABLE/AUTHORIZED PERSON
BY: _____

Printed Name of Server

NOTARY PUBLIC, THE STATE OF TEXAS

County, Texas

DEFENDANT'S
COPY

Exhibit A
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